

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**DAVID LEE NEELEY,**  
**Petitioner,**

**Case No. 1:02-CV-00520**  
**Judge Weber**  
**Magistrate Judge Black**

**v**

**HARRY RUSSELL,**  
**Respondent.**

**AFFIDAVIT OF LUIS DELOS SANTOS**

State of Ohio            )  
  ) ss.  
County of Franklin    )

I, Luis Delos Santos, having been duly sworn, state the following:

1. I am an attorney licensed to practice law in the State of Ohio since 2000. I am employed by the Office of the Ohio Public Defender. In the scope of my employment by the Office of the Ohio Public Defender, I acted as counsel for the Petitioner in the above-captioned case from August 7, 2003 until my withdrawal in October 2005.
2. I do not recall ever receiving, through the Court's CM/ECF system, electronic notification, on or about November 23, 2004, that a Report and Recommendation that the petition be dismissed was filed by Magistrate Judge Timothy S. Black. (See attached list of archived email attached hereto). At that time I was aware that Fed.R.Civ.P. 72 required that objections to the Report and Recommendation be filed within ten (10) days after service. I was also aware of the case of Thomas v. Arn, 474 U.S. 140 (1985) that a failure to file objections in accordance with Fed.R.Civ.P. 72 may result in a forfeiture of Petitioner's rights on appeal. Even though I believed that Mr. Neely's claims had merit, I never filed any objections to the Report and Recommendation. I never notified Mr. Neely that the Report and Recommendation had been issued.
3. On or about March 24, 2005, I received, through the Court's CM/ECF system, electronic notification that the District Court had issued an order adopting the Report and Recommendation and that the Clerk had issued judgment in favor of Respondent. At that time I was aware that Fed.R.App.P. 4 required that a notice of appeal be filed within thirty (30) days after the judgment or order appealed from is entered. Even though I believed that Mr. Neely's claims had merit, I neglected to file a notice of appeal on his

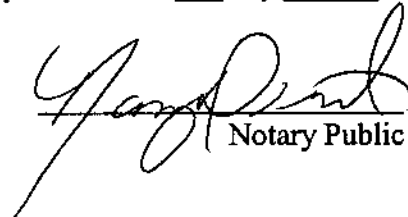
behalf. I never notified Mr. Neely that judgment had been rendered against him in the above-captioned action.

4. For over two (2) years I have been experiencing depression and anxiety in both my personal and professional lives.
5. During routine case review with my supervisor in August 2005 I looked at the Neely case on PACER and disclosed to him that I had missed two deadlines in Neely's case. I also disclosed to him my depression and anxiety. After thoroughly researching the matter and through discussions with my supervisor it was agreed that I should no longer represent Mr. Neely and that my employer should seek outside counsel to assist Mr. Neely in obtaining relief.
6. Due to the fact that my anxiety and depression adversely affected my work performance I voluntarily sought help from the Ohio Lawyers Assistance Program ("OLAP"). In August 2005, I met with Stephanie Krznarich of OLAP and she indicated that in addition to depression and anxiety I was probably suffering from Attention Deficit Disorder. I entered into a five (5) year contract with OLAP whereby I must go to counseling and seek treatment for my mental problems.
7. In September 2005, I began meeting with Dr. Jack Tarpey to deal with my depression and anxiety.

AFFIANT FURTHER SAITH NAUGHT.

  
Luis Delos Santos

Sworn to and subscribed before me in my presence this 24<sup>th</sup> day October, 2005.

  
Notary Public



NANCY J. DECATUR  
Notary Public, State of Ohio  
My Commission Expires  
May 29, 200~~2~~7

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| cmecfhelpdesk@ohsd.uscourts.g... Activity in Case 2:04-cv-00474-GLF-TPK Doup v. Warden, Ross Correctiona...    | Fri 6/4/2004 9:55 ... |

LUIS DE LOS SANTOS

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10/27/2005 2:32 PM

Exhibit \_\_\_\_\_